



A Test of Democracy: Ethiopia's Mass Media and Freedom of Information Proclamation

Tracy J. Ross*

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* J.D. Candidate, The Dickinson School of Law of Pennsylvania State University, 2010; B.A., *cum laude*, Virginia Polytechnic Institute and State University, 2007. The author would like to thank her family and loved ones, especially her parents, Michael and Donna Ross, for their unconditional love and encouragement. The author would also like to express her tremendous appreciation for everyone who was involved in conceptualizing and editing this Comment.

I. Introduction

David Ben-Gurion once said, “The test of democracy is freedom of criticism.”¹ Freedom of criticism has long been recognized as an essential, inalienable human right; a right that is thought to transcend political and geographical borders and applies regardless of culture, language, and national origin.² In Ethiopia, as democracy begins to grow despite a history of corruption and totalitarianism,³ freedom of expression has proven to be an unsteady notion.⁴ In fact, while Ethiopia gains respect in other aspects of the international political scene, the government struggles to justify its draconian control over the media.⁵

In December of 1948, the Universal Declaration of Human Rights was drafted as the foundation of international human rights law and the standard of achievement for all peoples and nations.⁶ Article XIX of the document states: “Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.”⁷

While nations across the world have come to respect and honor freedom of expression and access to information as inalienable human rights, the government of the Federal Democratic Republic of Ethiopia has spent years retreating from the international norm on media rights.⁸ The Ethiopian Constitution lays out the legal rights of citizens to hold opinions, thoughts, and free expressions.⁹ In the past, the government used a 1992 Press Proclamation as a means of restricting those rights of private media and, consequently, the citizens of Ethiopia.¹⁰

In 2003, the government introduced a draft press law as a platform for addressing domestic and international criticism of the deteriorating

1. See JAMES G. McDONALD, *MY MISSION IN ISRAEL: 1948-1951*, at 247 (2007) (referencing the quote by David Ben-Gurion, the first Prime Minister of Israel).

2. See Universal Declaration of Human Rights, G.A. Res. 217A, at 71, 74-75, U.N. GAOR, 3d Sess., 1st plen. mtg., U.N. Doc. A/810 (Dec. 10, 1948).

3. See 1 *WORLD PRESS ENCYCLOPEDIA: A SURVEY OF PRESS SYSTEMS WORLDWIDE* 297 (Amanda C. Quick ed., 2d ed. 2003).

4. See discussion *infra* Part II.

5. See Solomon Hailemariam, *Constitutionally Questionable*, *GLOBAL JOURNALIST*, Dec. 1, 2008, <http://www.globaljournalist.org/stories/2008/12/01/constitutionally-questionable/>.

6. See David Manasian, *50th Anniversary of the Universal Declaration of Human Rights*, *THE ECONOMIST*, Dec. 3, 1998, reprinted in *HUMAN AND CIVIL RIGHTS: ESSENTIAL PRIMARY SOURCES* 75 (Adrienne Lerner et al. eds., 2006).

7. Universal Declaration of Human Rights, *supra* note 2, at 74-75.

8. See discussion *infra* Part II.

9. See FEDERAL DEMOCRATIC REPUBLIC OF ETHIOPIA CONST. art. 29.

10. See GEBREMEDHIN SIMON GEBRETSADIK, *AFRICAN MEDIA DEVELOPMENT INITIATIVE: ETHIOPIA* § 3.2 (2006), available at http://downloads.bbc.co.uk/worldservice/trust/pdf/AMDI/ethiopia/amdi_ethiopia_full_report.pdf.

situation with the media.¹¹ The draft law generated years of debate among members of the media, international media organizations, and government proponents.¹² In July of 2008, after nearly six years of controversy surrounding the draft media law, the House of People's Representatives passed the Mass Media and Freedom of Information Proclamation (Press Law).¹³ The purpose of this Comment is to consider the Press Law and its ramifications on the media in Ethiopia as well as its position within the sphere of international human rights.

Part I of the Comment surveys the background of past media rights in Ethiopia and the atmosphere that surrounded freedom of expression prior to the passage of the Press Law in 2008. The Comment will explore the changing political landscape in Ethiopia, illustrated by the 2005 elections, and the different ways the government utilized the Press Proclamation as authority to stage a massive crackdown on the press in order to suppress anti-government sentiment. Finally, Part I of the Comment will discuss the debate and controversy surrounding the Draft Press Law from its introduction in 2003 to the passage of the Mass Media and Freedom of Information Proclamation in July 2008.

Part II of the Comment analyzes the effects the Press Law will likely have on the media and citizens of Ethiopia. The Comment focuses on the liberal preamble and its contradictory restrictive provisions. Because there is no official translation of the Press Law, secondary sources are cited for the controversial provisions of the law that are discussed. As a final matter of analysis, the Comment analyzes the Press Law in relation to Article XIX of the Universal Declaration of Human Rights and presents the law as a violation of the inalienable human rights Ethiopia has vowed to uphold.

Finally, the Comment explores the future of the Press Law. While the bill passed the House of People's Representatives, executive power resides with Prime Minister Meles Zenawi, who must sign the bill into law.¹⁴ At its conclusion, the Comment establishes the past and present of media law in Ethiopia and the new law's implications on the future. Whatever the future holds, it is clear, as Ben-Gurion predicted, that freedom of criticism has in fact tested Ethiopia's new democracy.

11. See ARTICLE 19 GLOBAL CAMPAIGN FOR FREE EXPRESSION, BRIEFING NOTE ON THE DRAFT ETHIOPIAN PROCLAMATION TO PROVIDE FOR THE FREEDOM OF THE PRESS I (2004) [hereinafter ARTICLE 19, BRIEFING NOTE].

12. See discussion *infra* Part II.B.

13. See Najum Mushtaq, *New Media Law, New Threat to Press Freedom*, INTER PRESS SERVICE NEWS AGENCY, July 8, 2008, <http://ipsnews.net/africa/nota.asp?idnews=43112>.

14. See 1 COUNTRIES OF THE WORLD: AND THEIR LEADERS YEARBOOK 2008, at 672 (Karen Ellicott ed., 2008).

II. BACKGROUND

A. *The Foundation of Ethiopia's Media Law*

Article 29 of the 1995 Ethiopian Constitution provides citizens of Ethiopia the right to hold opinions, thoughts, and free expressions.¹⁵ Specifically, Article 29 protects freedom of expression without interference, including the freedom to seek, receive, and impart information.¹⁶ It also affords freedom of the press and mass media by ensuring the opportunity for access to information of interest to the public and prohibiting censorship.¹⁷ Finally, Article 29 transcribes the media's right to institutional independence and legal protection to enable the accommodation of different ideas necessary to a democratic society.¹⁸

B. *The Past: 1992 Press Proclamation*

Press freedom was also previously afforded under Press Proclamation No. 34/1992.¹⁹ Although Article 29 of the Constitution provides freedom of the press, the government used Article 10 of the 1992 Press Proclamation as authority to restrict the press and prosecute journalists.²⁰ Article 10 established the press's duty to ensure that all media content it circulated would not give rise to any criminal or civil liability.²¹ Additionally, it imposed on the press the duty to ensure that media content was free from "any criminal offence [sic] against the safety of the State or of the Administration" and did not contain any defamatory or false accusations against individual nationalities, people, or organizations.²² Finally, Article 10 prohibited media content that encouraged the incitement of conflict between peoples or agitation of war.²³ It is under this Press Proclamation that the Ethiopian government

15. See FEDERAL DEMOCRATIC REPUBLIC OF ETHIOPIA CONST. art. 29.

16. See *id.*

17. See *id.*

18. See FEDERAL DEMOCRATIC REPUBLIC OF ETHIOPIA CONST. art. 29.

19. See COMMITTEE TO PROTECT JOURNALISTS, *Ethiopia*, in *ATTACKS ON THE PRESS IN 2000: A WORLDWIDE SURVEY* (A. Lin Neumann et al. eds., 2001), available at <http://www.cpj.org/attacks00/africa00/Ethiopia.html> [hereinafter CPJ, *ATTACKS 2000*].

20. See GEBREMEDHIN SIMON GEBRETSADIK, *AFRICAN MEDIA DEVELOPMENT INITIATIVE: ETHIOPIA* § 3.2 (2006), available at http://downloads.bbc.co.uk/worldservice/trust/pdf/AMDI/ethiopia/amdi_ethiopia_full_report.pdf.

21. See Press Proclamation No. 34/1992, art. 10, § 1 (1992); see also GEBRETSADIK, *supra* note 20 (explaining the importance of the pertinent sections of the law and the government's interpretation of them).

22. Press Proclamation No. 34/1992, art. 10, § 2 (1992).

23. See *id.*; see also GEBRETSADIK, *supra* note 20.

prosecuted journalists and limited the freedom of press that is outlined in the constitution and “necessary to a democratic society.”²⁴

C. *Past Censorship and Prosecution of Journalists in Ethiopia*

The 2005 elections in Ethiopia marked what seemed to be a turning point in both political and social development in Ethiopia.²⁵ In a change from past elections,²⁶ opposition parties participated in televised debates and campaigned across the country.²⁷ However, on voting day, Prime Minister Zenawi placed a thirty-day ban on any and all rallies.²⁸ When opposing parties, Zenawi’s Ethiopian People’s Revolutionary Democratic Front (EPRDF) and the Coalition for Unity and Democracy (CUD), each claimed victory after the elections, protestors gathered and accused the National Electoral Board of Ethiopia of manipulating the results.²⁹ In June 2005, the government ordered the police to begin arresting protestors and detaining opposition leaders, human rights investigators, and local election observers.³⁰ In a showing of the oppression that was to come, the government revoked the accreditation of journalists from both Voice of America³¹ and Deutsche-Welle³² as part

24. FEDERAL DEMOCRATIC REPUBLIC OF ETHIOPIA CONST. art. 29.

25. See discussion *infra* notes 27-30.

26. In the campaigns preceding past elections and polling days, most notably throughout the 2000 election, opposition candidates and supporters were the victims of human rights abuses, including arbitrary arrests and killings. However, while there were still complaints of human rights abuses in rural areas during the 2003 election, political expression and campaigning were freer in urban areas, with several independent and opposition party candidates contesting the elections. The National Electoral Board of Ethiopia brought together all of the political parties to agree on a revised code of conduct for the 2003 election, and the government even allowed election observation by invited international and local observers. See *The 15 May 2005 Elections and Human Rights—Recommendations to the Government, Election Observers and Political Parties*, UNREPRESENTED NATIONS AND PEOPLES ORGANIZATION, May 2, 2005, <http://www.unpo.org/content/view/2425/135/> [hereinafter *2005 Elections and Human Rights*].

27. See Terrence Lyons, International Foundation for Electoral Systems, Ethiopia: Implications of the May 2005 Elections for Future Democratization Programs 2 (Aug. 2005), available at <http://www.ifes.org/research.html> (search “Ethiopia;” then follow “Aug 05” report hyperlink).

28. See *id.*

29. See *id.*

30. See *id.*

31. The Voice of America (VOA) is a multi-media international broadcasting service funded by the US government. See generally Voice of America: *About VOA*, <http://www.voanews.com/english/about/index.cfm> (last visited Jan. 29, 2009) (providing VOA facts, charter, journalistic code, and history). The organization is dedicated to serving as an accurate, objective, and comprehensive source of news. *Id.* The VOA broadcasts in more than 40 languages and reaches an audience of more than 134 million people each week. *Id.*

of an effort to impede attention garnered by foreign press.³³ The government accused the journalists of filing “unbalanced reports” on the elections.³⁴

The government then turned its attention to the independent press in Ethiopia. Under Press Proclamation No. 34/1992, criminal charges could be brought against journalists for criminal defamation, incitement to violence, publication of false information, and other offenses.³⁵ Court cases against media members accused of violating the Press Proclamation often spanned years,³⁶ and journalists were regularly jailed

32. Deutsche-Welle (DW) is Germany’s independent international broadcaster funded by the federal government. *See generally* Deutsche-Welle: *About Us*, <http://www.dw-world.de/> (follow “About us” hyperlink) (last visited Jan. 29, 2009) (providing background information about the DW including: mission statement, organization information, and facts and figures). The organization is dedicated to communicating the values of free democracy and supporting human rights while promoting intercultural dialog. *Id.* DW, which reaches 240 million people, broadcasts over the Internet, television, and radio and is committed to providing a European perspective. *Id.*

33. *See Ethiopia: 2005 World Press Freedom Review*, INTERNATIONAL PRESS INSTITUTE, 2006, <http://www.freemedia.at/cms/ipi/freedom.html> (follow “Africa” hyperlink; then follow “Ethiopia” hyperlink; then follow “2005” hyperlink) [hereinafter *2005 Freedom Review*].

34. COMMITTEE TO PROTECT JOURNALISTS, *Lessons on Democracy, Pressure and the Press: Ethiopia, in ATTACKS ON THE PRESS IN 2005: A WORLD SURVEY* (Bill Sweeney et al. eds., 2006), available at http://www.cpj.org/attacks05/africa05/ethiopia_05.html [hereinafter CPJ, *Lessons on Democracy*].

35. *See* Press Proclamation No. 34/1992, art. 10, § 2 (1992); *see also* CPJ, *ATTACKS 2000*, *supra* note 19 (explaining that the liability established by Article 10 of the 1992 Press Proclamation allowed journalists to be jailed for vague charges); CPJ, *Lessons on Democracy*, *supra* note 34 (highlighting the pertinent sections and explaining that editors, who are held responsible all of the content in their newspapers, often had multiple charges pending against them and many were arrested more than once).

36. In 2005, Elias Kifle, publisher of the web site *Ethiopian Review*, was charged in absentia with treason for his dissemination. *See* COMMITTEE TO PROTECT JOURNALISTS, *Ethiopia, in ATTACKS ON THE PRESS IN 2006: A WORLDWIDE SURVEY* (2007), available at <http://cpj.org/2007/02/attacks-on-the-press-2006-ethiopia.php> [hereinafter CPJ, *ATTACKS 2006*]. Also in 2005, the government arrested and jailed at least fifteen members of the private media in the media crackdown following the election and accused them of trying to stage a conspiracy to overthrow the government. *See id.* Charges included “outrage against the constitution and the constitutional order.” *Id.* On April 9, 2007, almost two years later, the court acquitted and set free eight of the private media editors and publishers charged with anti-state crimes and “attempted genocide.” The government later sought to reinstate the charges. *See id.* The other jailed journalists were not set free until July and August of 2007, after signing incriminating statements, and pleading guilty to anti-state charges, in order to receive presidential pardons. *See id.* Additionally, Wosonseged Gebrekidan, a former editor of an Ethiopian weekly, was convicted and sentenced to eight months in jail for defaming a former diplomat; Getachew Simie, a former editor, was convicted in 2005 of criminal defamation allegedly committed in 1998; and Leykun Engeda, another editor, was convicted in 2005 for allegedly reporting false news in 1999. *See IPI Watch List: Ethiopia—May 2006 Update*, INTERNATIONAL

for not paying bail or missing court hearings.³⁷ After accusing members of the private press of working as “mouthpieces” for the opposition and attempting to “violently undermine the constitutional order in the country,” in November of 2005, the government began a full-scale crackdown on members of the private media.³⁸ In an effort to suppress the anti-government sentiment, the government detained more than a dozen journalists, issued a blacklist of editors and publishers from private newspapers that it planned to prosecute, and threatened to charge journalists with treason, an offense punishable by death.³⁹ State-owned media carried propaganda smearing private and foreign media and accused Ethiopian Free Press Journalists’ Association (EFJA) leaders of implementing a plan of violence.⁴⁰ Prime Minister Zenawi stated, “It is well known that there are many in the private press who have been fanning the violent activities and who have been working hand-in-hand with the [opposition parties]. These ones are also equally answerable . . . as they have been engaged in the violent and criminal activities.”⁴¹

As a result of the crackdown, at least eight newspapers were closed by government pressure, and members of the media fled the country to avoid prosecution.⁴² Many of the detained journalists were not released until months and even years later when Ethiopia’s High Court granted acquittals and dismissed charges of “attempted genocide.”⁴³ Still others were required to sign incriminating statements in order to receive presidential pardons.⁴⁴ Also as a result of the 2005 media crackdown, many journalists worked under self-censorship, and foreign press operated under a “strictly enforced regimen of renewable one-year residency and accreditation permits.”⁴⁵ As the atmosphere surrounding the press became more restrictive, debate about a draft media law intensified.

PRESS INSTITUTE, <http://www.freemedia.at/cms/ipi/watchlist.html> (follow “Ethiopia” hyperlink) (last visited Jan. 30, 2008).

37. *See Lessons on Democracy, Pressure and the Press: Ethiopia*, *supra* note 34.

38. *Id.*

39. *See id.*

40. *See id.*

41. *2005 Freedom Review*, *supra* note 33.

42. *See* COMMITTEE TO PROTECT JOURNALISTS, *Ethiopia*, in *ATTACKS ON THE PRESS IN 2007: A WORLDWIDE SURVEY* (2008), available at <http://cpj.org/2008/02/attacks-on-the-press-2007-ethiopia.php> [hereinafter CPJ, *ATTACKS* 2007].

43. *Id.*

44. *See id.*

45. *Id.*

D. *Debate Regarding the Draft Press Law*

In 2003, two years before the crackdown on the media, the government addressed the criticisms of the 1992 Press Proclamation when it introduced two versions of a Proclamation Regarding Press Freedom.⁴⁶ While neither version was adopted into law, the drafts laid the groundwork for the Draft Press Law, which was surrounded by controversy from its introduction.⁴⁷ The Draft Press Law began years of debate regarding media freedom in Ethiopia.⁴⁸ International lobbying organizations focused on the shortcomings of the Draft Press Law and expressed concern about the future of the press in Ethiopia and its reputation among international standards on freedom of expression.⁴⁹

Among the lobbying organizations' chief criticisms of the Draft Press Law was a major concern over the bill's imposition of a registration regime.⁵⁰ Under the provisions of the Draft Press Law, media outlets requesting registration in order to obtain a license were required to provide extremely detailed information regarding all journalists working for the media outlet and distribution of any press content.⁵¹ Additionally, the Minister of Information determined the length and fees for registration, and applications could be denied based on "excessively broad grounds."⁵²

Lobbying organizations, such as Article 19 Global Campaign for Free Expression (Article 19),⁵³ were strongly opposed to the inclusion of

46. See ARTICLE 19, BRIEFING NOTE, *supra* note 11, at 1.

47. See FREEDOM HOUSE, FREEDOM OF THE PRESS 2007: ETHIOPIA DRAFT COUNTRY REPORTS AND RATINGS I (May 1, 2007).

48. After the Draft Press Law was introduced, nineteen members of the International Freedom of Expression eXchange (IFEX) wrote a joint letter to Ethiopian Information Minister Bereket Simon expressing concerns about the proposed law and urging the government to "ensure that national consultations on the draft law respect the concerns of international, regional and local free-expression groups." See *Ethiopia: IFEX Members Raise Concerns Over Press Law*, INTERNATIONAL FREEDOM OF EXPRESSION EXCHANGE, July 28, 2004, <http://www.ifex.org/en/content/view/full/60335/>. On September 28, 2004, International Press Institute (IPI), the Media Institute for Southern Africa, Article 19, and the World Press Freedom Committee met with Simon to lobby for less restrictive provisions and voice concerns that the draft law posed a threat to press freedom. See *Ethiopia: IFEX Members Lobby Government on Controversial Press Law*, INTERNATIONAL FREEDOM OF EXPRESSION EXCHANGE, Oct. 6, 2004, <http://www.ifex.org/en/content/view/full/61761/>.

49. See ARTICLE 19, BRIEFING NOTE, *supra* note 11, at 1-2.

50. See *id.* at 8.

51. See *id.* (explaining that license applicants were required to provide information including: names, addresses, dates of birth, and employment contracts for all journalists working for the applicant; a schedule of publication; and the time, method, and places of distribution).

52. *Id.* at 9.

53. Article 19 is a registered United Kingdom charity, which works with more than 80 partners across the globe and champions freedom of expression as a fundamental

these provisions in the final law.⁵⁴ Specifically, organizations criticized the Draft Press Law for providing broad grounds for refusal of a registration application and granting wide discretion to the government.⁵⁵ Opponents felt this broad discretion qualified the system as a licensing regime instead of a registration system.⁵⁶ Additionally, the law allowed the Ministry to use the provisions on time limits and fees to punish or favor certain media outlets.⁵⁷ The system created by the draft law also imposed substantive conditions, such as vague content restrictions on the media and extremely burdensome requirements about the breadth of information that was to be provided by media outlets.⁵⁸ Finally, the registration system provided under the Draft Press Law was to be overseen by the Ministry of Information, creating a media system directly dependent on the government.⁵⁹

Another primary concern regarding the Draft Press Law was the penalty of imprisonment for “minor technical offenses, such as publishing a periodical without having a certificate of registration, submitting false information in the application for a certificate of registration, failing to publish a reply or correction in times of elections, or distributing prohibited foreign press products.”⁶⁰ Organizations were also concerned that courts would be granted broad censorship powers and could impose a three-year ban on media outlets for press law violations.⁶¹ Many organizations felt the penalties imposed by the Draft Press Law were disproportionate to these offenses.⁶²

A final fundamental concern among the opposition to the Draft Press Law was the establishment of a 29-member Press Council “comprised of representatives from the government, the press, and civil society” whose powers and procedures would be determined by the government.⁶³ Article 19 expressed in its *Briefing Note* that regulatory

human right. The organization “monitors, researches, publishes, lobbies, campaigns, sets standards and litigates on behalf of freedom of expression wherever it is threatened.” Article 19 Global Campaign for Free Expression: About Us, <http://www.article19.org/about/index.html> (last visited Nov. 20, 2008).

54. See ARTICLE 19, BRIEFING NOTE, *supra* note 11, at 9.

55. See *id.*

56. See *id.*

57. See *id.*

58. See *id.* at 10.

59. See *id.*

60. *2005 Elections and Human Rights*, *supra* note 26.

61. See COMMITTEE TO PROTECT JOURNALISTS, *Ethiopia*, in *ATTACKS ON THE PRESS 2003: A WORLDWIDE SURVEY* (2004), available at <http://www.cpj.org/attacks03/africa03/ethiopia.html> [hereinafter CPJ, *ATTACKS 2003*].

62. See *2005 Elections and Human Rights*, *supra* note 26; see also ARTICLE 19, BRIEFING NOTE, *supra* note 11, at 12; CPJ, *ATTACKS 2003*, *supra* note 61.

63. CPJ, *ATTACKS 2003*, *supra* note 61.

bodies with power over the media should be fully independent of government and the size of the regulatory body should not be so large as to undermine the effectiveness of the body.⁶⁴

While these objections represented the points of the most intense contention, Article 19 specifically addressed several other problem areas in the Draft Press Law: its excessively broad scope, restrictions on who may practice journalism, broad exceptions to the right to access information held by public authorities, a right to reply remedy that undermines editorial independence, and powers vested in courts and prosecutors to engage in prior-censorship or suspend media outlets.⁶⁵

As the shortcomings of the Draft Press Law became more and more apparent, media organizations and lobbying groups began actively voicing and demonstrating their opposition.⁶⁶ At the urging of the Committee to Protect Journalists (CPJ),⁶⁷ the Ethiopian Information Ministry called a symposium in 2003 to hear the concerns of representatives of the private press, press freedom advocates, and advertising agencies.⁶⁸ However, members of the private press and the EFJA⁶⁹ were denied the opportunity to comment during the discussion.⁷⁰ In protest, these representatives walked out of the symposium and criticized the Draft Law publicly⁷¹ for not taking into consideration the

64. See ARTICLE 19, BRIEFING NOTE, *supra* note 11, at 14.

65. See *id.* at 1-2.

66. See *CPJ Calls for Open Debate on Draft Press Law*, ASIA AFRICA INTELLIGENCE WIRE, Jan. 31, 2003, available at http://www.accessmylibrary.com/coms2/summary_0286-22290050_ITM.

67. The Committee to Protect Journalists is an independent, nonprofit organization funded by private contributions and headquartered in New York. See generally Committee to Protect Journalists: About Us, <http://www.cpj.org/about/> (last visited Jan. 25, 2009) (providing background information about the organization and answers to frequently asked questions). CPJ aims to protect journalists by revealing abuses against the press, warning journalists where abuses are taking place, and acting on behalf of imprisoned or threatened journalists. See *id.*

68. See *CPJ Calls for Open Debate on Draft Press Law*, *supra* note 66.

69. The EFJA is a non-profit organization affiliated with the International Federation of Journalists and advocating for local press freedom in Ethiopia. Tejal Yerunkar, *Ethiopian Free Press Journalists' Association (EFJA)*, NEWSWATCH, May 26, 2006, <http://www.newswatch.in/newspedia/500> (alteration in original). The organization was founded in 1993 and established as an official NGO in 2000. See *id.* The directives of the organization include goals to promote relations between members and mass and government organizations and to “protect and ensure the respect of the organisational interest and benefits of members, ensure the respect of the human and democratic rights of members; [and] ensure the well-being and development of the free press.” *Id.*

70. See *CPJ Calls for Open Debate on Draft Press Law*, *supra* note 66.

71. EFJA President Kifle Mulat criticized the government’s purpose for calling the symposium: “It is a propaganda stunt designed to show to the world that the government is democratic. It is also a measure calculated to win the hearts and sympathies of donors and creditors.” *Ethiopia: 2003 World Press Freedom Review*, INTERNATIONAL PRESS INSTITUTE, <http://www.freemedia.at/cms/ipi/freedom.html> (follow “Africa” hyperlink;

views of private journalists.⁷² EFJA directly attacked the government when it issued a statement that the measures taken by the government against journalists “greatly threatened the very existence and survival of the free press” and added that dictatorship had gained control over democracy in Ethiopia.⁷³ In response to EFJA’s public criticism, the authorities claimed that EFJA had failed to submit a certified audit of its budget in violation of the licensing requirements for media outlets.⁷⁴ As a result, the government officially shut down the organization and issued a strict ban on EFJA executive committee members’ communications with other media outlets.⁷⁵ Free press organizations across the world condemned the government’s action and called for changes to be made to the Draft Press Law.⁷⁶ On December 24, 2004, thirteen months after the government officially banned the EFJA, the federal high court of

then follow “Ethiopia” hyperlink; then follow “2003” hyperlink) (last visited Jan. 26, 2009) [hereinafter *2003 Freedom Review*].

72. See *CPJ Calls for Open Debate on Draft Press Law*, *supra* note 66.

73. *2003 Freedom Review*, *supra* note 71.

74. See *Authorities Harass, Intimidate Leaders of Local Journalists’ Association*, COMMITTEE TO PROTECT JOURNALISTS, Oct. 13, 2005, <http://cpj.org/2005/10/authorities-harass-intimidate-leaders-of-local-jou.php>.

75. The Justice Ministry barred executive committee members from carrying out even limited activities such as hiring an accountant to perform the audit and holding overdue elections for a new executive committee. See COMMITTEE TO PROTECT JOURNALISTS, *Ethiopia, in* ATTACKS ON THE PRESS IN 2004 (2005), available at <http://cpj.org/2005/03/attacks-on-the-press-2004-ethiopia.php> [hereinafter CPJ, ATTACKS 2004]. Eventually the Justice Ministry took over the role until a new executive committee was elected. See *id.* However, the government warned former executive committee members that they were barred from communicating with media outlets and foreign organizations. See *id.*

76. See Press Release, International Press Institute, IPI and IFJ Condemn Ban on Ethiopia Free Press Journalists’ Association (Dec. 9, 2003), available at <http://www.freemedia.at/cms/ipi/> (follow “Public Statements” hyperlink; then follow “Public Statements 2003” hyperlink”; then follow “Ethiopia, 09 December 2003” hyperlink):

It is blatantly clear that the government is trying to find any excuse to close down the country’s only representative journalists’ and editors group [International Press Institute and the International Federation of Journalists] call on the government to re-instate both EFJA and its Executive Committee, and to ensure that all licensing problems are quickly resolved [R]escind the media law and undertake such measures as are necessary to create a media environment that will allow journalists to work without fear of harassment or intimidation.

See also *Government Shuts Down Independent Journalists’ Association*, REPORTERS WITHOUT BORDERS, Dec. 11, 2003, <http://www.rsf.org/> (follow “Africa” hyperlink; then follow “Africa Archives: 2003” hyperlink; then follow “Ethiopia: 12 November 2003” hyperlink) (“The coincidence between the EFJA’s criticism of this repressive law and the insistence by ministry official Getachew Gonfa that the suspension is not political is just too much to be believed . . . stop harassing the independent media. . .”).

Ethiopia reversed the ban and deemed the Justice Ministry's action illegal.⁷⁷

Over the next few years, the Draft Press Law continued to be a source of debate and controversy between free press organizations and the Ethiopian government.⁷⁸ With a media forum to discuss and debate the bill organized by the Horn of Africa Press Institute and scheduled for the next day, lawmakers voted on the Draft Press Law.⁷⁹ On July 1, 2008, nearly six years after the first draft of the law was introduced, the Ethiopian House of Peoples' Representatives passed the Mass Media and Freedom of Information Proclamation.⁸⁰

III. ANALYSIS

A. *Liberal Preamble as a Cover for Restricting Media*

The preamble of the Mass Media and Freedom of Information Proclamation as it was passed by the House of People's Representatives declares that "the proclamation removes all obstacles that were impediments to the operation of the media in Ethiopia."⁸¹ The Ethiopian Ministry of Foreign Affairs (MFA) explained that this "extremely liberal introduction and preamble" exemplified the Proclamation's aims to implement values of accountability and transparency for government activities.⁸² In fact, the government used and continues to use the broad aims laid out in the preamble to defend the Press Law.⁸³

In one of its press releases following the Press Law's passage, the MFA criticized the independent media for its lack of interest in developing a platform for interaction with the Ethiopian government.⁸⁴

77. The federal high court dissolved the government-created organization that replaced the EFJA and mandated that the government's system for electing the EFJA membership be replaced by a system in which only EFJA members were eligible for leadership positions. *See Newsletter n°1 Press Freedom: Alerts from the Continent*, RAP 21, June 1, 2005, <http://www.rap21.org/article18379.html> [hereinafter *Newsletter*]. The court also ordered the Justice Ministry to pay the EFJA's legal costs. *See id.*

78. *See* FREEDOM HOUSE, *FREEDOM OF THE PRESS 2007: ETHIOPIA DRAFT COUNTRY REPORTS AND RATINGS 1* (May 1, 2007).

79. *See* Tizita Kebede, *Ethiopia: Independent Media Professionals Deplore New Press Law*, *DAILY MONITOR*, July 4, 2008, <http://allafrica.com/stories/200807040103.html>.

80. *See* Mushtaq, *supra* note 13; *see also* *A Week in the Horn*, MINISTRY OF FOREIGN AFFAIRS OF ETHIOPIA, July 18, 2008, http://www.mfa.gov.et/Press_Section/Week_Horn_Africa_July_18_2008.htm ("The Mass Media and Freedom of Information Proclamation passed the House of Peoples Representatives by 291 to 77 votes with nine abstentions.").

81. Mushtaq, *supra* note 13.

82. *Week in the Horn*, *supra* note 80.

83. *See* Mushtaq, *supra* note 13.

84. *See Week in the Horn*, *supra* note 80.

The language of the press release explained that, as stated in the preamble, the law is not only designed to open up the government and other officials to greater transparency and accountability, but “despite” the independent media’s lack of engagement with the government, the law is also designed to allow the private media to self-discipline.⁸⁵ Going further, the MFA utilized the preamble to describe the liberal scope of the law’s aims while only casually mentioning the limitations the law imposes: “In fact, incorporated into the Proclamation is what amounts to a Freedom of Information Act though there are, as is usual, some exceptions, as stated by law, covering national trade secrets or defence and intelligence reports.”⁸⁶

This acknowledgment of the limitations on freedom of information and expression included in the Press Law is hidden behind a complicated justification referring to the general security of the country and the rationalization that provisions of limitation are common in such press laws. The justification for the limitations seemingly given by the government is that, while the provisions of the law may impinge on human rights, the preamble institutes a relationship of candidness between government and media as well as media and public and expands freedoms of information and expression.

In fact, a preamble is an explanation for the reasons for the law’s enactment and the objects sought to be accomplished by the law.⁸⁷ While it is generally helpful in interpreting ambiguities in the language of the provisions, it is not an essential part of an act and “neither enlarges nor confers powers.”⁸⁸ Interpreted through this definition, the preamble cannot accomplish what the Ethiopian government purports; it cannot change the restrictive provisions of the Press Law into an expansion of freedom simply by declaring so in the preamble of the statute. While the independent media and other human rights organizations continue to criticize the bill, the government uses the preamble language to suggest to the independent media and those who criticized the Draft Press Law for not being liberal enough that this bill is exactly what they asked for and more.⁸⁹ The preamble is one of the only areas in which the government has a defense against these critics founded in the language of the statute.

85. *Id.*

86. *Id.*

87. *See* BLACK’S LAW DICTIONARY 1175 (6th ed. 1990).

88. *Id.*

89. *See Week in the Horn, supra* note 80.

B. Implications of the Press Law on the Media

Contrary to the declarations of the government and the liberal language of the Press Law's preamble, the Press Law in fact restricts the media in ways that the prior press law did not. The Ethiopia House of People's Representatives passed the Press Law largely unchanged from its original 2003 draft version.⁹⁰

1. Defamation Provision

Article 43(7) of the statute provides that defamation and false accusation against "constitutionally mandated legislators, executives and judiciaries" will be prosecutable "even if the person against whom they were committed chooses not to press charge[s]."⁹¹ In essence, under the new Press Law, journalists and other members of the media can be criminally prosecuted, fined, or jailed for defamation when there is no victim. In light of the global attitude surrounding laws of criminal defamation, especially for violations against governments, this provision seems retrogressive and draconian. In 2000, the Special Rapporteur on Freedom of Expression reported to the United Nations (UN) Commission on Human Rights that criminal defamation laws are a potentially serious threat to freedom of expression.⁹² He also recalled the UN Human Rights Committee's concern over custodial sanctions, such as those imposed by the Press Law, for defamation and "its call for the total abolition of the offence of defamation of the State."⁹³

Although the Ethiopian MFA claimed that this provision would provide a more responsible media, it seems more likely to provide a media atmosphere of oppression. Members of the private media and even the public will likely be intimidated by the possibility of prosecution for any comments they make about government business or officers. Without the freedom to comment on any and all news, whether regarding the government or not, the media cannot fulfill its responsibility to provide complete and accurate information to the public. Additionally, the public's right to receive the information is clearly violated.

90. See Mushtaq, *supra* note 13.

91. *Id.*

92. See WRITERS IN PRISON COMMITTEE, INTERNATIONAL PEN, DEFAMATION AND 'INSULT': WRITERS REACT 1 (2006), available at <http://www.englishpen.org/writersinprison/campaigns/defamationandinsultcampaign2008/> (follow "See international PEN's report on insult and defamation laws around the world" hyperlink) [hereinafter WRITERS REACT].

93. *Id.*

Although the law does not expressly limit the media's output in regard to type or scope of information, Article 43(7) protects the government indirectly: the government has the ability to prosecute any statement or article written about an official, even if no official feels the report has impacted his reputation. The MFA expected the defamation provision to encourage "developmental journalism" founded on a responsible and professional media;⁹⁴ however, this provision sets the Ethiopian media back while more developed countries call for an end to similar laws.⁹⁵

Article 19 described in a report on defamation laws that there is a three-part test found in most national and international jurisprudence for assessing the legitimacy of restrictions on freedom of expression.⁹⁶ First, the restriction must be prescribed by narrow and unambiguous law.⁹⁷ Second, the restriction must have the genuine purpose or effect of protecting a legitimate reputation interest.⁹⁸ The Press Law seems to fail this requirement. Because the law allows the government to prosecute without a defamed victim coming forward, it follows that the law has no genuine purpose of protecting a legitimate reputation interest. It seems unreasonable to prosecute someone for causing an injury when there is no victim claiming one. Thus, it seems the government is claiming the officials' interests as its own as a means of gaining power and leverage against those questioning or making false accusations against the government. Finally, the restriction must be necessary in a democratic society and will not be justified if the benefits of protecting reputations do not significantly outweigh the harm to freedom of expression.⁹⁹ The Press Law does not satisfy this requirement, either. The provision only protects government officials, not the public, which makes the benefits very narrow. Additionally, the information that is suppressed by the media for fear of prosecution amounts to a violation of the public's freedom of information.

94. *Week in the Horn*, *supra* note 80.

95. In a legal analysis regarding the scope of defamation laws, legal and human rights experts from around the world acknowledged the necessity of defamation laws for protecting individuals' reputations, but the experts found the following instances in which defamation charges are not justified: legitimate criticism of officials; statements affecting the reputation of objects, such as the state or nation; and statements affecting the reputation of those who have died. *See* WRITERS REACT, *supra* note 92, at 1-2 (citing ARTICLE 19, DEFINING DEFAMATION: PRINCIPLES ON FREEDOM OF EXPRESSION AND PROTECTION OF REPUTATION (July 2000), available at <http://www.article19.org/pdfs/standards/definingdefamation.pdf> [hereinafter ARTICLE 19, DEFINING DEFAMATION]).

96. *See* ARTICLE 19, DEFINING DEFAMATION, *supra* note 95, at 4.

97. *See id.*

98. *See id.*

99. *See id.*

Contrary to the government's claim that Article 43(7) is legitimate and necessary to provide for responsible journalism and a cooperative relationship between government and media, the defamation provision providing for prosecution even in the absence of a victim conflicts with international standards of freedom of expression and information.¹⁰⁰

2. Registration System

In 2007, largely as a result of the debate over the Draft Press Law, the Ministry of Information's (MOI) powers were redefined to include oversight of licensing and registration of media sources.¹⁰¹ The Press Law acknowledges this new authority and grants broad discretion to the MOI in decisions regarding licensing.¹⁰² Countries and organizations have addressed the issues with government involvement in media licensing for centuries. Where the freedom of the press is in any way linked to the whims of the government, there seems to be a contradiction in the word freedom. The licensing regime established by the Press Law creates not just a link between the two but a relationship in which the media cannot operate without the approval of the government. Under this type of regime, the press cannot afford to question the government's actions or statements. The government's authority reaches too far: a media outlet could be shut down, questioned, or even prosecuted if the government deemed the press product criminal.

The likely result of this fear of retribution is that journalists cannot or will not speak out when the government tries to pass additional repressive laws. In this sense, the limits on free expression could lead to even greater expansion of government power and control in areas beyond media rights and create significant challenges for the new democracy.

The founding fathers of the United States of America recognized that creating a media free from government influence is critical in building a successful democracy.¹⁰³ Because the press in Ethiopia is dependent upon the government for a license, it will be more difficult for

100. See *Week in the Horn*, *supra* note 80.

101. See Mushtaq, *supra* note 13.

102. See ARTICLE 19, BRIEFING NOTE, *supra* note 11, at 9.

103. Thomas Jefferson once wrote:

The functionaries of every government have propensities to command at will the liberty and property of their constituents. There is no safe deposit for these but with the people themselves; nor can they be safe with them without information. Where the press is free, and every man able to read, all is safe.

Letter from Thomas Jefferson to Colonel Charles Yancey (Jan. 6, 1816), in *THE WRITINGS OF THOMAS JEFFERSON: VOLUME X, 1816-1826*, at 4 (Paul Leicester Ford ed., 1899).

the media to play the watchdog role that it was envisioned to fulfill.¹⁰⁴ Ethiopia needs an independent press council in order to self-govern and encourage public confidence in the media as well as the government.

Breaking the ties between the media and government will strengthen the public's confidence in the media by creating an unbiased press. Ideally the press will then be able to publish accurate information without harboring a grudge against the government. It may not be possible to immediately rid the press of its memory of the oppression it has suffered; however, an independent press council would also give the public or other media members a forum in which they can challenge information or press that retain remnants of bias. There is no immediate remedy, but the creation of an independent press council instead of one overseen by the government would pave a path toward a more accountable press and transparent government.

3. Excessive Fines

Another means in which the government may be able to use the Press Law to oppress the media is through excessive fines imposed on the press for minor violations of the statute. For instance, the fine for a conviction of defamation can reach up to 100,000 birr under the new law.¹⁰⁵ The magnitude of this fine can best be understood when compared to the fines for other criminal violations. Specifically, the fines for offenses such as rape and child labor abuse may not exceed 1,000 birr.¹⁰⁶

In most jurisdictions, especially developed countries, the degree of fines for defamation and rape or child labor abuse is opposite that in Ethiopia.¹⁰⁷ The magnitude of the fines imposed by the Press Law is

104. The government-controlled media has consistently promoted government policy and activities. Because of this, the citizens of Ethiopia generally do not view the press as a watchdog of the government. See WORLD PRESS ENCYCLOPEDIA, *supra* note 3, at 301.

105. See Kebede, *supra* note 79. 100,000 birr is the equivalent of approximately 9,000 US dollars. *World Currency Exchange Rates*, <http://www.exchange-rates.org/> (last calculated Feb. 1, 2009).

106. See Kebede, *supra* note 79.

107. For example, in Pennsylvania rape is a felony of the first degree and, as such, is punishable by a maximum fine of \$25,000. 18 PA. CONS. STAT. § 3121 (2003) (citing 18 PA. CONS. STAT. § 1101 (1998)). However, under Pennsylvania law, defamation is not a criminal offense. A charge of defamation may only be brought in civil court where defendants merely face damages or injunction. 42 PA. CONS. STAT. ANN. § 8343 (2007). German criminal defamation and rape laws provide an additional example of the differences between Ethiopian penalties and the penalties imposed in more developed jurisdictions. In Germany, penalties for criminal defamation focus first on public retractions and apologies. Monetary damages are regarded as a secondary remedy. Media Libel—Libel Law in Other Countries, <http://medialibel.org/libel/other.html>. However, a rape conviction is punishable by imprisonment for up to ten years.

such that they could easily put a media source out of business should it be found guilty of what other jurisdictions view as minor criminal offenses. Additionally, the excessive fines could lead to further punishment should the individual or media source be unable to pay.¹⁰⁸ The International Press Institute explained how excessive fines perpetuate the system of oppression: “The journalists end up trapped in a cycle whereby they remain in prison not for the offence they have allegedly committed, but for their inability to pay a fine.”¹⁰⁹

In the United States and in jurisdictions around the world, citizens have a protected constitutional right against the imposition of excessive fines.¹¹⁰ In fact, in the United States Constitution, the right to protection from excessive fines is linked to protection from cruel and unusual punishment.¹¹¹ The fines for mere media offenses imposed by the Ethiopian Press Law may easily be seen as cruel and unusual punishment. However, the Ethiopian government, which in the past has equated statements criticizing the government with attempted genocide, is quick to defend as reasonable the provisions providing for these types of fines.¹¹²

C. *Press Law as a Violation of Article XIX*

The preceding provisions of the Mass Media and Freedom of Information Proclamation are not simply sources of criticism from media in Ethiopia. Due to their effects on the domestic and foreign media as well as the citizens of Ethiopia, these provisions violate international human rights standards. Article XIX of the Universal Declaration of Human Rights provides that everyone has the right to freedom of expression and to receive and impart information and ideas.¹¹³

By allowing the prosecution of media under provisions such as the defamation provision, the Press Law impinges on the media’s right to impart information and ideas. As mentioned previously, the new law gives the government the right to challenge any information disseminated that relates to government actions, institutions, or officials.¹¹⁴ Essentially the government is using the new law to threaten

Strafgesetzbuch [StGB][Penal Code] Nov. 13, 1998, Bundesgesetzblatt, Teil I [BGBl. I], § 177, ¶ 5.

108. See *World Press Freedom Review 2006: Ethiopia*, INTERNATIONAL PRESS INSTITUTE, <http://www.freemedia.at/cms/ipi/freedom.html> (follow “Africa” hyperlink; then follow “Ethiopia” hyperlink; then follow “2006” hyperlink).

109. *Id.*

110. See U.S. CONST. amend. VIII.

111. See *id.*

112. See CPJ, *ATTACKS 2006*, *supra* note 36.

113. See Universal Declaration of Human Rights, *supra* note 2, at 74-75.

114. See Mushtaq, *supra* note 13.

the media: there are consequences to publishing a report that is critical of the government. While the government is not using the Press Law to directly censor the media, the threat of legal action, the requirements for obtaining a media license, and the consequences of a violation will indirectly censor what the press is willing to publish.¹¹⁵ The media will likely only publish a report that questions or challenges the government if it is worth the risk of punishment. Not only does this impinge on the inalienable human rights of the media, the restrictions on the media acutely affect the information being relayed to the citizens on Ethiopia. Due to the government's influence and indirect censorship of the media, any information disseminated to the citizens of Ethiopia that is biased or incomplete violates the citizens' right to freedom to receive information.

When the media is forced to balance the risks of publishing reports questioning government officials or policies against the importance of broadcasting critical information, there is inherently a form of censorship involved. In a letter to current President Girma Woldegiorgis, the Executive Director of the Committee to Protect Journalists expressed the feelings of many human rights organizations from around the world when he called for Woldegiorgis to reject the bill.¹¹⁶ The Press Law, he states, allows the government to restrict the media and falls "well short of international standards."¹¹⁷ Whereas the Declaration of Human Rights provides that all humans should enjoy an unrestricted right to receive and impart ideas, the provisions of the Press Law that encourage or cause any form of censorship by creating fear of punishment or retribution directly contradict that right.¹¹⁸ The shortcomings of the new Press Law are many, and while the rights proposed by the Universal Declaration of Human Rights are not legally binding, the international community has not and will not turn a blind eye to the abuses committed by Ethiopia's government.

115. See Renee Frojo, *Media Censorship in Africa*, ALLGAMBIAN, Dec. 1, 2007, <http://www.allgambian.net/> (follow "News" hyperlink; then follow "Media Censorship in Africa" link) (explaining the effect of threats of punishment on the media: "The climate of self-censorship and the imprisonment of journalists are so frequent and threatening, that they have successfully suppressed the courage of those bold journalists once willing to criticize their government.").

116. See Letter from Joel Simon, Executive Dir., Comm. to Protect Journalists, to Girma Woldegiorgis, President, Fed. Democratic Republic of Eth. (July 11, 2008) (on file with Comm. to Protect Journalists), available at <http://cpj.org/letters/2008/> (follow "Page 3" hyperlink; then follow "Ethiopian press bill flawed, needs revision" hyperlink).

117. *Id.*

118. See Universal Declaration of Human Rights, *supra* note 2, at 74-75.

IV. CONCLUSION

Although the Mass Media and Freedom of Information Proclamation has a liberal preamble and the Ethiopian government and Ministry of Information have declared it a vehicle for moving toward a more open atmosphere for the exchange of information in Ethiopia, the provisions in fact provide for the opposite. Among other things, the Press Law continues to allow the government to criminally prosecute journalists and members of the media for expressing their views and establishes a stronger foothold for government regulation of information. The Press Law impinges on the ability to “receive and impart information and ideas through the media and regardless of frontiers.”¹¹⁹

If Ethiopia hopes to move toward a more democratic state, it is critical to open the lines of communication between the government, media, and citizens. Freedom of expression is the only way to achieve an accountable and transparent government free from corruption and tyranny, while developing a professional and unbiased press. The press, in other words, must have the freedom to criticize the government. The Mass Media and Freedom of Information Proclamation has proven to be the test of democracy for Ethiopia.

119. Universal Declaration of Human Rights, *supra* note 2, at 74-75.